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DEPT FOR AIT/W, EAP/TC, INR/EAP

FROM AIT KAOHSIUNG BRANCH OFFICE

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SUBJECT: Kaohsiung Mayoral Election Lawsuit Decisions: Competing Appeals

REF: A) 2007 Taipei 1382 B) 2007 Taipei 0520

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¶1. (U) Summary: The KMT's Kaohsiung Mayoral candidate, Huang Chun-ying, will soon appeal the court decision to dismiss his vote recount lawsuit concerning the December 2006 election. In addition, Mayor Chen Chu (DPP) will appeal the nullification lawsuit (also filed by Huang) in which the court, in a controversial decision, annulled the results of the December 2006 Kaohsiung mayoral election. End summary.

¶2. (SBU) On June 15, the Kaohsiung District Court annulled the results of last December's Kaohsiung mayoral election (see ref A) as the result of a lawsuit filed by Huang Chun-ying. Simultaneously, the same court dismissed a separate but related recount lawsuit also filed by Huang that claimed vote manipulation and fraud (see ref A and B). Huang told AIT/K that he will appeal the court's recount decision by July 15. Meanwhile, Mayor Chen Chu's office revealed that Chen would file her appeal to the nullification lawsuit decision on July 12.

¶3. (SBU) According to Taiwan's legal system, appeals do not require justification and are not limited to reviews of procedural issues in the lower court. As such, anyone can appeal based on simple dissatisfaction with the court ruling. An appeals court has the right and authority to review all facts and evidence presented in the original case and to reach its own conclusions. In the above-mentioned lawsuits, the court is supposed to make its rulings within six months after receiving an appeal. However, extensions can be made at the judge's discretion. Kaohsiung Vice Mayor Chiu Tai-san, who is a legal scholar, told AIT/K that he expects these highly political cases will probably experience delays and run beyond the allotted six month time frame.

¶4. (SBU) Vice Mayor Chiu also suggested that Mayor Chen remains vulnerable in her appeal on the nullification lawsuit. Chiu explained that most judges and prosecutors, who are not DPP supporters, feel oppressed because the DPP, ever since its inception, has continually accused the judicial system of corruption.

¶5. (SBU) KMT candidate Huang Chun-ying told AIT/K that 4,907 irregular votes were found in the court's actual recount process. Since the number of these votes is larger than the narrow margin by which he lost the mayoral election (only 1171 votes), he is optimistic his appeal will succeed when the evidence is reviewed by new judges. Huang stressed to AIT/K that this legal process is a necessary democratic procedure to clarify election doubts. Huang

said he will complete the legal process and accept the final result, adding that he has faith in Taiwan's judiciary.

Public Opinion

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¶6. (SBU) According to Zhan Yuan-hsiung, a senior journalist and spokesman for the Kaohsiung County Council, the recount lawsuit filed by Huang (see ref B) was more objective and easier to resolve in the public's eyes, since it was based on facts and scientific method. On the other hand, the ruling on the nullification case was subject to the judge's subjective interpretation of events and the law.

¶7. (SBU) Taiwan Solidarity Union (TSU) legislator Lo Chih-ming told AIT/K that he expects the appeals rulings on both the recount and nullification lawsuits to be reversed, with Huang winning the recount appeal and Chen winning the nullification appeal. Lo believes Huang will lose the nullification case because the original verdict was based only on indirect evidence, arguing that a videotape shown on television had affected voters' ability to cast a free ballot.

Comment

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¶8. (SBU) The outcome of these two election lawsuit appeals will determine whether a mayoral by-election will be held in Kaohsiung. If the appeals court actually concludes these cases within the six month time frame and the results require a by-election, that will raise the political stakes in Kaohsiung as the by-election could coincide with either the upcoming January 2008 legislative or the March 2008 presidential election.

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